

# **GOLDENEYE TECHNOLOGIES PROSPECTUS**

## **SUMMARY OF TERMS**

The following is a summary of the principal terms of the offering of Limited Partnership Interests of GoldenEye Technologies L.P. (the “Fund”). The Limited Partnership Agreements of the Fund, and the Management Agreement between the Fund and GoldenEye Management Inc. (“GEMINC”) should be reviewed carefully for more complete information with respect to the Fund. This summary is qualified in its entirety by the reminder of the Memorandum and by the foregoing documents.

### Investment Objectives

The Fund seeks to generate enormous returns for its limited partners by investing in technology oriented companies with a product or service that has been developed but has reached a risk stage with respect to sales, profitability, strategy, or management issues such that GoldenEye’s professional staff would add tremendous value.

### General Partner

GoldenEye Management L.P., a Delaware limited partnership (the “GEMLP”), will be the general partner of the Fund. GEMLP will have sole responsibility for the investment decisions of the Fund.

The managing general partner of GEMLP will be GoldenEye Management Incorporated, a Delaware corporation (“GEMINC”) and wholly owned by GoldenEye International Inc. Other general partners of GEMLP will be selected individuals to serve on the GoldenEye Technologies Executive Board. These members will be responsible for the investment decisions of the Fund along with GEMINC. The GoldenEye Technologies Advisory Board will consist of individuals involved in various aspects of technology. These individuals will provide insight into the latest technology trends and developments.

### Entity

GoldenEye Technologies is a limited partnership to be formed in Delaware.

### General Partner

GoldenEye Management L.P. is a limited partnership to be formed in Delaware (“GEMLP”).

### Securities

An aggregate of \$20 million of Limited Partnership Interests in the Fund (the “Capital Commitment”) to qualified institutional and accredited individual investors. The first closing may be held when at least \$10 million of committed capital has been raised. The General Partner may increase the amount of the offering to \$50 million at its discretion. Individual investors must subscribe for at

least \$100,000 and institutional investors for a minimum of \$500,000, except as otherwise reduced by the General Partner in its sole discretion.

#### Payment of Subscriptions

Limited Partners will pay 50% of their subscriptions at closing and the balance as necessary with at least 15 days written notice in amounts needed to make portfolio investments. Capital Commitments will expire two years after the final closing, if not fully taken down prior to that time.

#### Term

The Fund's term will be 7 years, subject to one optional two-year extension for orderly liquidation.

#### Preferential Return (Hurdle)

All partners will receive an annual 6% cumulative, non-compounded return on their paid-in and undistributed capital contributions before the General Partner receives any cash distributions with respect to its carried interest in the Fund's cumulative net income and gains. Distributions will be treated first as a return of capital in calculating preferred returns.

#### Allocation of Gains & Losses

Allocations of the Fund's income, gains and losses will be made in a manner consistent with the distribution procedures outlined above. Capital Accounts will be maintained for each partner in accordance with United States federal income tax guidelines, and liquidating distributions will be made in accordance with Capital Account balances.

#### Distributions

After an amount equal to all partners' contributed capital plus the 6% preferential return has been paid to all partners, all distributions of cash (other than special distributions to pay tax liabilities) will be made to the General Partner until it has received 20% of all distributions made by the Fund in excess of actual capital contributions. Thereafter, distributions of cash (other than tax distributions) will be made 80% to all partners in proportion to their capital contributions and 20% to the General Partner. In the case of a distribution of securities in kind, an amount of such distribution equal to the cost basis of the Fund in such securities generally will be made to all partners in proportion to their capital contributions, and any excess of the value of those securities over their cost basis will be distributed 80% to all partners in proportion to their capital contributions and 20% to the General Partner; the General Partner's 20% carried interest will be held in escrow until all committed capital has been contributed and the Fund has distributed to each partner an amount equal to its paid-in capital contributions and the 6% preferential return (hurdle).

Fees & Expenses

For its services, GoldenEye Management L.P. (the “General Partner”) will be paid in advance a quarterly management fee equal to 0.50% of committed capital for the first three years. Thereafter, the quarterly management fee will be 0.375% of committed capital.

Management Agreement

The Fund will enter into an agreement (the “Management Agreement”) with GEMINC, the managing general partner of the General Partner. GEMINC will provide personnel, office space and facilities to the Fund and will assume all routine expenses such as salaries, insurance, support services, consulting fees, rent, telephone, utility, and travel expenses for conducting the Fund’s investment activities. The Fund will pay all other expenses not borne by the management company under the Management Agreement. These expenses include, without limitation, the Fund’s legal, auditing and other expenses associated with the acquisition, holding or disposition of investments (whether or not consummated), registration expenses, organizational, syndication and offering expenses, and costs of annual and other meetings with its partners, the amount of which cannot be determined in advance.

The Fund will pay to GEMINC in advance a quarterly Management Fee (the “Management Fee”) of 0.50% of its committed capital for the first three years after the initial closing. Thereafter, each Fund will pay a quarterly Management Fee of 0.375% of committed capital. If any partner is admitted to the Fund after the initial closing, the Management Fee with respect to that partner’s additional capital commitment will be increased retroactive to the initial closing, and that increase will be borne by the newly admitted partner. Neither GEMINC nor GoldenEye, nor any of its affiliates will receive compensation from any portfolio company for services, except reimbursement for reasonable out-of-pocket expenses. Notwithstanding the above, if GoldenEye or any of its affiliates other than GEM employees provides the services of any officer or employee to any portfolio company at the request of the Executive Committee, then that portfolio company will reimburse GoldenEye or the affiliate for all costs of providing such personnel.

Organizational Expenses

All organizational expenses will be paid by the Fund, including all legal fees. No placement fees will be paid by the Fund in connection with the sale of the Limited Partnership Interests except for a financial advisor’s fee not to exceed 3% of aggregate Capital Commitments payable to *investment bank* in connection with its services as exclusive financial advisor and placement agent.

Default

Upon any failure of a Limited Partnership to contribute any portion of its Capital Contribution when called for in accordance with the Limited Partnership Agreements, that partner will be in default. A defaulting Partner's Capital Account will be reduced by 50% of its Capital Contribution.

#### Transfer of Limited Partnership Interests

Limited Partnership Interests may not be sold, transferred or assigned without the prior written consent of the General Partners, which consent will not be unreasonably withheld or delayed.

#### Limited Partner Meetings

The Fund will hold annual meetings offering Limited Partners the opportunity to review and discuss the Fund's investment activities and portfolio companies.

#### Reports to Limited Partners

The Fund will furnish annually to its Partners an audited balance sheet and statement of income and changes in its capital, a statement of allocations and a statement of the value of the Fund's portfolio securities and the net asset value of the Fund. On a quarterly basis, the Fund will furnish its Limited Partners with unaudited financial statements and other information.

#### Co-Investment Opportunities

The General Partners intend to provide co-investment opportunities to the Limited Partners whenever possible and appropriate.

#### Unrelated Business Taxable Income

The General Partner will use its best efforts to operate the Fund so as not to give rise to unrelated business taxable income to Limited Partners that are tax-exempt from federal income tax.

#### Follow-On-Funds

No General Partner or Executive Committee member in their own capacity shall participate in the organization of a new fund with an investment focus similar to that of the Fund until at least 60% of the Fund's Capital Commitments have been invested, used to pay Fund expenses, or reserved for follow-on investments in existing portfolio companies or for reasonably anticipated future Fund expenses.

### **DISTRIBUTIONS**

#### Distribution Policies

The Fund is intend to distribute all current net income and the proceeds of all dispositions of securities no less frequently than on a quarterly basis, except to the extent that the General Partners determine such amounts should be reserved to make follow-on investments or pay reasonably anticipated expenses of the Fund. As a matter of administrative convenience, however, the Fund generally will not make distributions other than to satisfy tax liabilities until the aggregate amount

available to it for distribution exceeds \$1,000,000. All distributions other than liquidating distributions will be made in cash or marketable securities.

In any year in which net income is allocated to the Partners, distributions (“Tax Distributions”) will be made to the Partners in an amount intended to satisfy United States federal and state tax liabilities. The General Partners, however, may elect to defer or reduce Tax Distributions with respect to any year.

#### Preferential Return

Each Partner will receive a cumulative preferential return on that Partner’s paid-in and undistributed contribution equal to 6% per year (a “6% Preferential Return”), before the General Partner receives any distributions with respect to its carried interest in the Fund’s cumulative net income and gains. For purposes of calculating the 6% Preferential Return, distributions (including Tax Distributions) will be treated first as a return of contributed capital to the extent thereof.

#### Discretionary Distributions

All distributions other than Tax Distributions and liquidating distributions will be made by the Fund as follows:

- (a) first, 100% to all Partners in proportion to their respective paid-in capital contributions to the Fund (“Capital Contributions”) until they have received total distributions in cash and marketable securities (including Tax Distributions) equal to their aggregate Capital Contributions;
- (b) second, 100% to all Partners in proportion to their respective Capital Contributions until they have received total distributions in cash and marketable securities (including Tax Distributions) equal to their 6% Preferential Returns;
- (c) third, 100% to the General Partner until it has received additional distributions (including additional Tax Distributions) in the aggregate to equal 20% of all distributions made by the Fund in excess of the Partners’ aggregate Capital Contributions to the Fund; and
- (d) fourth, 80% to all Partners in proportion to their Capital Contribution and 20% to the General Partner.

#### In General

Upon the termination of the Fund, creditors (if any) will be paid first. There will then be a period of orderly liquidation during which the remaining assets of the Fund will be distributed to its Partners, in cash or in kind, in proportion to their positive balances in their Capital Accounts (as described below).

### **ALLOCATIONS**

#### Net Profits

Net profits of the Fund generally will be allocated as follows:

- (a) first, 100% to all Partners in proportion to their Capital Contributions to the Fund until such time as each Partner has received aggregate distributions equal to the sum of his/her Capital Contribution and his/her 6% Preferential Return;
- (b) second, 100% to the General Partner until it has received additional allocations equal to 20% of the Fund's net profits; and
- (c) third, 80% to all Partners of the Fund in proportion to their Capital Contributions and 20% to the General Partner.

#### Net Losses; Other Allocations

Net losses of the Fund generally will be allocated first to offset any net profits previously allocated to Partners of the Fund, commencing with net profits most recently allocated, and then 100% to all Partners in proportion to their respective Capital Contributions. The financial advisor's fee paid by the Fund with respect to the purchase of the Limited Partnership Interest of any Partner will be allocated to that Partner. To the extent that any allocation of the losses or expenses of the Fund to any Partner would create or increase a deficit in that Partner's Capital Account (described below) in excess of the amount of such Partner's unpaid subscription to contribute capital to the Fund, those losses and expenses will be allocated to other Partners. Subsequent allocations of the Fund's net profits will first be made to reverse these special loss allocations, and then in accordance with the preceding paragraph.

#### Capital Accounts

A separate capital account will be maintained by the Fund for each of its Partners, which will be (i) increased by capital contributions made by a Partner to the Fund and by any income and gains allocated by the Fund to such Partner, and (ii) decreased by the amount of cash and the fair market value of any assets distributed to such Partner and any Fund expenses or losses (including the financial advisor's fee) allocated by the Fund to such partner. Any difference between the Fund's cost basis in securities distributed in kind and the fair market value of such securities at the time of distribution will be treated and allocated as gain or loss.

### **THE LIMITED PARTNERSHIP AGREEMENT**

The following is a brief summary of certain provisions of the Limited Partnership Agreements. This summary does not purport to be complete and is qualified in its entirety by reference to the Limited Partnership Agreements.

#### Liability of General Partners

The General Partner is liable for all debts and other obligations of the Fund to the extent a Fund lacks sufficient assets to satisfy those obligations. The General Partners are not liable to the Limited Partners for honest mistakes or for the negligence, dishonesty or bad faith of any employee, broker or other agent of the Fund selected by any General Partner with reasonable care.

#### Indemnification

In general, if a General Partner, a Principal, a person affiliated with the Fund, a member of the Executive Committee or the Scientific Board, or any officer, director, employee or agent of a general partner of the General Partner has acted in good faith as to a matter involving the Fund, such party is entitled to be indemnified by the Fund against any loss, cost or expense incurred in connection with any action, suit or proceeding related to that matter. In addition, the Fund may pay the expenses incurred by the indemnified party in defending a civil or criminal action in advance of the final disposition of such action, provided such defendant agrees to repay such expenses if adjudicated not to be entitled to indemnification.

#### Control

The General Partners will have exclusive and complete control of the activities of the Fund. The Limited Partners will have no voice in the Fund's decisions. No material changes in the Limited Partnership Agreements may be effected by the General Partners without the approval of at least a majority in interest of the Limited Partners.

#### Term

The term of the Fund is seven years, but that term may be extended for one two-year period to permit orderly liquidation. Holders of 80% of the Limited Partnership Interests may dissolve the Fund or cause a General Partner to be removed and appoint a new General Partner at any time.

#### Withdrawals of Limited Partnership Interests

Withdrawals are not permitted, except in limited instances when necessary to comply with laws or regulations applicable to a Limited Partner, including applicable ERISA regulations.

#### Transferability of Limited Partnership Interests

The interests of the Limited Partners are not assignable without the prior written consent of the General Partners, which consent will not be unreasonably withheld or delayed. An assignee will be admitted to the Fund as a substituted Limited Partner only with the prior written consent of the General Partners and an opinion of counsel. No expenses of any assignment will be borne by the Fund. In no event will a proposed transfer be permitted if, in the opinion of counsel to the Fund, such transfer will subject the Fund, the General Partners or their respective partners or other affiliates to any additional

regulatory requirements under the laws of any jurisdiction (including the United States Investment Company Act of 1940 or the Investment Advisors Act of 1940) or will result in a violation of applicable law or adverse tax consequences.

#### Portfolio Valuations

All Fund portfolio investments will be valued by the General Partners. In general, freely-tradable securities for which market quotations are readily available will be valued at the last trade on the exchange where they are primarily traded or, if not traded on an exchange, generally at the closing bid price (or average of bid prices) last quoted by an established over-the-counter quotation service. Restricted securities in publicly-held companies may be valued at a discount from the market price, depending on the circumstances. For securities issued by privately-held companies, the Fund's cost, the price of recent transactions in the company's securities and the company's earnings, sales, operating cash flow plans, book value and prospects will generally be among the factors examined in arriving at the valuation.

#### Follow-on Funds

Without the consent of a majority in interest of the Limited Partners, neither the General Partners nor the Principals in their own capacities will participate in the organization of a new investment limited partnership utilizing an investment strategy similar to that of the Fund until at least 60% of the Capital Commitments have been invested or committed to be invested in portfolio companies, reserved for future investments reasonably anticipated by the General Partners to be made in existing portfolio companies, or reserved for the Fund's reasonably anticipated expenses and liabilities.

### **UNITED STATES TAX CONSIDERATIONS**

#### Fund Classification

In the opinion of their counsel, the Fund will be classified and treated as a partnership for United States income tax purposes.

Accordingly, the Fund will not pay United States federal income taxes, but each Partner which is a "United States person" as defined in Section 7701 (a) (30) of the United States Internal Revenue Code of 1986, as amended (the "Code"), will be required to report its distributive share (whether or not distributed) of the Fund's income, gains, losses, deductions and credits. Tax information will be delivered to each Partner as soon as possible after the end of each fiscal year.

#### United States Limited Partners

Under the Limited Partnership Agreement of the Fund, the General Partner is required to use its best efforts to avoid causing the Fund to make any investment, incur any liability or otherwise take any



action which would result in the realization by any tax-exempt Limited Partner of “unrelated business taxable income” within the meaning of Section 512 of the Code. Notwithstanding the best efforts undertaking of the General Partner, it is possible that the Fund could realize income which would constitute unrelated business taxable income and, in that event, each tax-exempt Limited Partner would be subject to United States federal income tax on its share of such income.

Under Section 67 of the Code, non-corporate taxpayers may deduct certain miscellaneous expenses (e.g., investment advisory fees, tax preparation fees, unreimbursed employee expenses, subscriptions to professional journals, etc.) only to the extent such deductions exceed, in the aggregate, 2% of the taxpayer’s adjusted gross income. Each Partner’s share of the Management Fee paid by the Fund to GEM will be included among the miscellaneous expenses potentially subject to the 2% floor. Corporate Partners, tax-exempt Partners and Partners that are not United States persons, however, generally will not be affected by the 2% floor. Section 68 of the Code separately imposes limitations on the deductibility of itemized deductions by individuals whose adjusted gross incomes exceed \$100,000, which may also affect the ability of any Limited Partner who is an individual to deduct his share of the Management Fee. Certain other expenses of the Fund incurred in connection with the offering and sale of its Limited Partnership Interests (e.g., syndication fees and expenses) also will not be deductible for United States federal income tax purposes.

Under the Limited Partnership Agreements and pursuant to Section 754 of the Code, the General Partners will have the authority to elect to adjust the basis of the Fund’s assets in connection with certain distributions to Partners or certain transfers of interests in the Fund. Such an election, if made, could affect the amount of a Partner’s distributive share of gain or loss recognized by the Fund on a disposition of its assets. The General Partners have no present intention of making such an election; however, the General Partners reserve the right to make this election in their sole discretion.

#### Importance of Obtaining Professional Tax Advice

The foregoing summaries do not discuss any tax laws other than those of the United States and do not discuss any tax laws other than those of the United States and do not discuss the taxation of the receipt by the Fund or any Partner of income from sources outside the United States. The summaries of tax consequences are not intended as a substitute for careful tax planning by each prospective investor. The effect of the tax laws of other jurisdiction to which the Partners or the Fund may be subject, the existing United States income tax laws and treaties, and possible changes in such laws and treaties, will vary with the particular circumstances of each investor. For example, legislation was introduced in the United States Congress in 1989 and 1990 which, if enacted, would have subjected an investor that was

not a United States person to United States federal income tax on any gains realized when that investor disposed of stock of a United States corporation if that investor owned, directly or indirectly, 10% or more by vote or value of the stock and other equity of the corporation. Accordingly, each prospective investor is advised to consult with and rely upon its own tax counsel as to the United States federal income tax consequences of an investment in the Fund and as applicable state, local and foreign taxes.

#### Reliance on Opinion of Counsel

The opinion of counsel described above will be provided in writing to the Fund. Each such opinion will be based on current United States federal income tax law, the provisions of the Limited Partnership Agreements as initially adopted, and certain assumptions set forth in such opinion. No rulings have been or will be requested from the United States Internal Revenue Service, and no assurance can be given that the Internal Revenue Service will concur with that opinion or the tax consequences described above. Furthermore, any changes with that governing law, the Limited Partnership Agreements or the operation of the Fund could affect the conclusions set forth in that opinion.

### **Employee Benefit Plan Regulations**

The General Partners intend to organize and operate the Fund so that an investment in the Fund will be a permissible investment for profit-sharing, pension or other retirement trusts (Collectively, “employee benefit trusts”) subject to ERISA. In considering an investment in the Fund, a fiduciary of an employee benefit trust should take into account the facts and circumstances of that trust. In particular, the fiduciary of such a trust must consider whether an investment in the Fund meets the prudence and diversification requirement of ERISA and is consistent with applicable rules and regulations prohibiting certain transactions between the trust and parties related to the trust, and fiduciary of the trust or the employer that sponsors the trust.

Each fiduciary also should consider, among other things, the definition of “plan assets” under ERISA and the Department of Labor regulations in this regard. The General Partners intend to organize and operate the Fund so that it will be exempt from the plan asset regulations. The underlying assets of the Fund will not be treated as plan assets, and those regulations therefore will not apply to an investment in the Fund, if, in general, either (i) less than 25% of its Limited Partnership Interests are held by employee benefit trusts, or (ii) the Fund qualifies as a Venture Capital Operating Company (“VCOC”). Generally, the regulations define a VCOC as an entity which invests at least one-half of its assets (valued at cost) in companies in which the entity has management rights, which rights are actually exercised to some degree. In determining whether the entity has management rights, factors such as the

right to elect a director, the right to inspect the books and records of a company, and ownership of a significant portion of the equity capital of a company will be considered. If employee benefit trusts acquire 25% or more of the Limited Partnership Interests in the Fund, the General Partner will use its best efforts to cause the Fund to qualify as a VCOC.

### **Private Placement Status**

The offer and sale of the Limited Partnership Interests will not be registered under the United States Securities Act of 1933, as amended (the “Securities Act”), or under applicable state securities laws. The Limited Partnership Interests are being offered and sold in reliance upon the exemption from registration provided by Selection 4 (2) of the Act, and the offering is designed to comply specifically with the requirements of Rule 506 of Regulation D under the Securities Act.

As a purchaser of the Limited Partnership Interests in a private placement not registered under the Securities Act, each purchaser (other than certain Principals) will be required to represent, among other things, that it is acquiring the interests for investment purposes only and not with a view to or for resale or, distribution of the Limited Partnership Interests, and that it is an “accredited investor” within the meaning of Regulation D under the Securities Act. Further, each purchaser must be prepared to bear the economic risk of the investment for an indefinite period, because the Limited Partnership Interests cannot be sold unless they are subsequently registered under the Securities Act or an exemption from such registration is available. It is extremely unlikely that the Limited Partnership Interests will ever be registered under the Securities Act.

### **Regulation**

The Fund will not be registered as an investment company under the United States Investment Company Act of 1940. The Fund will rely on the exemption contained in Section 3 (c) (1) for issuers whose outstanding securities are beneficially owned (as determined under that Section) by not more than 100 persons. The General Partners will require that investors other than natural persons who intend to purchase more than 10% of the Limited Partnership Interests make the appropriate representations to satisfy the conditions of this exemption.

The General Partners will not be registered as investment advisors under the United States Investment Advisors Act of 1940.

In connection with any investment by the Fund in or beneficial ownership by the Fund of more than 5% of any class of the Equity securities of a company registered under the United States Securities Exchange Act of 1934 (the “Exchange Act”), the Fund may be required to make certain filings with the

United States Securities and Exchange Commission. Generally, these filings require disclosure of the identity and background of the purchasers, the source and amount of funds used to acquire the securities, the purpose of the transaction, the purchaser's interest in the securities, and any contracts, arrangements or undertakings regarding the securities. In certain circumstances the Fund may be required to aggregate its investment position in a given portfolio company with the beneficial ownership of that company's securities by or on behalf of any co-investing Limited Partners, which could require the Fund, together with such other parties, to make certain disclosure filings or otherwise restrict the Fund's activities with respect to such portfolio company securities.

Also, if the Fund becomes the beneficial owner of more than 10% of any class of the equity securities of a portfolio company registered under the Exchange Act or places a director on the Board of Directors of that portfolio company, the Fund may be subject to certain additional reporting requirements and to liability for short-swing profits under Section 16 of the Exchange Act.